

Claimant testified that he suffered a neck injury when he fell while moving an empty file cabinet in his office. The Administrative Law Judge either did not believe claimant's testimony or did not consider the moving of the file cabinet to be part of claimant's duties. Although claimant was on probation for poor work performance and attendance, the record as a whole does not contain any evidence to contradict claimant's testimony and his testimony is not inherently improbable. The medical records confirm an injury.

It seems clear an injury while moving the file cabinet would be an injury which arose out of and in the course of employment. Claimant testified he had taken two file cabinets home to paint. He painted one but not the other. He was bringing both back at the time of his injury. His secretary had run out of cabinet space. He was in the lobby of the office at the time of the injury.

The Appeals Board finds the evidence does establish claimant suffered accidental injury arising out of and in the course of his employment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated January 13, 1997, should be, and is hereby, reversed and remanded for decision about appropriate temporary total and/or medical benefits.

IT IS SO ORDERED.

Dated this ____ day of April 1997.

BOARD MEMBER

c: Fred Spigarelli, Pittsburg, KS
William L. Phalen, Pittsburg, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director